

IN THE
UNITED STATES DISTRICT COURT
FOR THE
CENTRAL DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

APR 22 2020

DAVID WAYNE SMITH, JR.,)

PLAINTIFF,)

v.)

UNITED STATES OF AMERICA,)

DEFENDANT.)

PER

DEPUTY CLERK

28 U.S.C.S. § 2671 et seq.

COMPLAINT PURSUANT TO FEDERAL TORT CLAIMS ACT

COMES NOW David Wayne Smith Jr., Plaintiff, pro se, and brings this action against the United States of America, Defendant, before the Honorable Court pursuant to the Federal Tort Claims Act, 28 U.S.C.S. § 2671 et seq., to recover damages incurred by negligent acts of the United States.

Plaintiff, a ward of the United States in custody of the Federal Bureau of Prisons, suffered an egregious personal injury when employees of the United States failed to execute its duties as mandated by 18 U.S.C.S. § 4042. The United States negligently provided Plaintiff access to weightlifting machines it had been prohibited, since November 1995, from maintaining or servicing (see EXHIBITS E & F). On March 16, 2018, Plaintiff was using one of these machines in the prison gymnasium when one of its cables snapped, causing a part of the machine to strike Plaintiff's

face.

On May 1, 2019, Plaintiff submitted a timely SF-95, Claim for Damage, Injury, or Death (see EXHIBIT G), for damages in the amount of \$6,470.00, to the Federal Bureau of Prisons, Northeast Regional Office. On October 31, 2019, Darrin Howard, Northeast Regional Counsel, Federal Bureau of Prisons, denied said claim (see EXHIBIT I).

There can be no doubt that employees of the Federal Bureau of Prisons knew these unserviceable, unmaintainable machines and their mechanical components (i.e. cables) were **decades** beyond their service life. Moreover, it is irrefutable that employees of the Federal Bureau of Prisons neglected to remove these dilapidated weightlifting machines from inmates' access for **decades** after they were prohibited, by federal law and Bureau policy, from servicing them. Plaintiff avers that it is clear that Federal Bureau of Prisons employees ignored the high risk of injury these machines posed to inmates in their care. To say these machines were/are ticking time bombs is no stretch of the imagination.

WHEREFORE Plaintiff seeks damages in the amount of \$6,470.00 for personal injury, pain, suffering, permanent facial scarring, mental anguish, embarrassment, and cost of litigation, as authorized under Pennsylvania tort law.

Respectfully Submitted,

David W. Smith, Jr.

David Wayne Smith, Jr.
Register No. 13236-084
Plaintiff, pro se

March 1, 2020

EXHIBITS

Table of Contents

<u>EXHIBIT A</u>	Bureau of Prisons Health Services Clinical Encounter, Provider: Amy Creveling, RN, dated 3/16/18, time stamped 19:38 hours, (4) pages
<u>EXHIBIT B</u>	Bureau of Prisons Health Services Clinical Encounter, Provider: Jessie Ayers, PA-C, dated 3/16/18, time stamped 20:47 hours, (3) page
<u>EXHIBIT C</u>	Bureau of Prisons Health Services Pain Management, generated 10/29/18 at 13:54 hours by Donald Eppley, HIT, (1) page
<u>EXHIBIT D</u>	18 U.S.C.S. § 4042, Duties of Bureau of Prisons, (1) page
<u>EXHIBIT E</u>	Zimmer Amendment, enacted on April 26, 1996, (1) page
<u>EXHIBIT F</u>	Memorandum for Chief Executive Officers, Guidelines for Implementation of the Zimmer Amendment, Kathleen M. Hawk, Director, Federal Bureau of Prisons, dated November 15, 1995, (8) pages
<u>EXHIBIT G</u>	Standard Form 95, Claim for Damage, Injury, or Death, May 1, 2019, (4) pages
<u>EXHIBIT H</u>	U.S. Department of Justice, Federal Bureau of Prisons, Northeast Regional Office, RE: Administrative Claim Received May 1, 2019, Claim No. TRT-NER-2019-03973, Darrin Howard, Regional Counsel, dated May 2, 2019, (1) page
<u>EXHIBIT I</u>	U.S. Department of Justice, Federal Bureau of Prisons, Northeast Regional Office, RE: Administrative Claim No. TRT-NER-2019-03973, Darrin Howard, Regional Counsel, dated October 31, 2019, (1) page

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